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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: John Jensen, et al.)
,) Group Art Unit: 2811
)
Serial No.: 10/699,276) Examiner: Cuong Quang Nguyer
)
Filed: October 31, 2003) Atty. Docket No.: 03-0968
)
For: Mixed LVR and HVR Reticle Set for)
the Processing of Gate Arrays, Embedded)
Arrays and Rapid Chip Products)
)

RESPONSE TO OFFICIAL ACTION Restriction/Election Requirement

Hon. Commissioner of Patents and Trademarks Washington, D.C. 20231

Sir:

This response is presented to the Office Action mailed August 20, 2004, wherein the Examiner required restriction pursuant to 35 U.S.C. §121. Election is hereby made, with traverse, to prosecute Group II, method claims 9-13.

Remarks/Arguments

Reconsideration of the restriction is respectfully requested.

In the first place, Applicants respectfully submit that Group I is misclassified in the restriction/Election Requirement. Apparatus claims 1-8 are not drawn to a semiconductor device, but are drawn towards a reticle (which is used to make a semiconductor device).

Secondly, restriction is not required by 35 U.S.C. §121, as suggested in the Office Action. Congress wisely granted the *discretion* to restrict applications. According to 35 U.S.C, §121 "... the Commissioner may require the application to be restricted...." (emphasis added).

Furthermore, MPEP § 803 lists two criteria that must be present for restriction to be proper:

- 1) The inventions must be independent or distinct as claimed; and
- 2) There must be a serious burden on the examiner if restriction is required.

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